



EIOPA/13/241  
16 May 2013

**Discussion Paper**  
**on a**  
**possible EU-single market for personal**  
**pension products**

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## 1. Responding to the Discussion Paper

EIOPA welcomes comments on the Discussion Paper on a possible EU-single market for personal pension products.

The consultation package includes:

- The Discussion Paper
- Template for comments

Please send your comments to EIOPA in the provided Template for Comments, by email [personalpensions@eiopa.europa.eu](mailto:personalpensions@eiopa.europa.eu), by 16 August 2013, 18:00 CET.

Contributions not received in the provided template for comments, or sent to a different email address, or after the deadline, will not be processed.

### **Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with EIOPA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by EIOPA's Board of Appeal and the European Ombudsman.

### **Data protection**

Information on data protection can be found at [www.eiopa.europa.eu](http://www.eiopa.europa.eu) under the heading 'Legal notice'.

## 2. Executive Summary

### Background and aim of the paper

On 18 July 2012 the European Commission (**COM**) asked EIOPA to deliver technical advice on the prudential regulations and consumer protection measures that are needed to create a single market in the field of personal pension products (**PPPs**), both DC and DB.<sup>1</sup> The COM further specified that EIOPA, in doing so, should consider at least two approaches:

- 1) Developing common rules to enable cross-border activity in the field of PPPs (similar to the IORP Directive); or
- 2) Developing a 28<sup>th</sup> regime<sup>2</sup>.

As acknowledged in the COM's White paper on pensions, *"the [s]ingle market is a key instrument to support pension adequacy and fiscal sustainability. There is untapped potential to realise further efficiency gains through scale economies, risk diversification and innovation."*<sup>3</sup>

EIOPA welcomes the views of stakeholders on this issue and has therefore decided to phase its work as follows:

Stage 1: Draft a Discussion paper in order to collect input from stakeholders

Stage 2: Draft a Preliminary report outlining issues and options in order to receive a more specific request from COM

Stage 3: Draft a Final Advice to COM

EIOPA's Task Force on Personal Pensions (**TFPP**)<sup>4</sup> was launched in February 2013. After brief initial analysis of issues related to the request of the COM, EIOPA publishes this discussion paper in order to provide the opportunity to all stakeholders to make early submissions on this work. The early nature of this discussion paper should be noted. EIOPA's preference is to obtain the first views of stakeholders when our own approach is at a relatively early stage.

EIOPA, in line with the request from the COM, will provide advice on what **legislative changes** are needed in the areas of prudential law and the protection of personal pension plan holders (**PPP holders**) in order to create a single market for PPPs. This work is conducted in parallel with a separate initiative from the COM<sup>5</sup> focusing on improving consumer protection in the area of third-pillar retirement products through **voluntary codes** coordinated at the EU level and possibly an EU certification scheme.

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<sup>1</sup> [http://ec.europa.eu/internal\\_market/pensions/docs/calls/072012\\_call\\_en.pdf](http://ec.europa.eu/internal_market/pensions/docs/calls/072012_call_en.pdf)

<sup>2</sup> For the purpose of this paper the „28th regime“ is referred to as „2nd regime“.

<sup>3</sup> European Commission. White Paper on adequate, safe and sustainable pensions, 2012, pg. 13, available at <http://ec.europa.eu/social/BlobServlet?docId=7341&langId=en>

<sup>4</sup> <https://eiopa.europa.eu/about-eiopa/organisation/working-groups/task-forces/task-force-on-personal-pensions/index.html>

<sup>5</sup> This work is undertaken as a follow up to the White Paper on Pensions

## Scope and structure of the paper

The first part sets the scene for the discussion paper by providing an analysis of the main characteristics and existing definitions of PPPs.

The paper focuses on two possible approaches for creating a single market for PPPs – passporting and the 2<sup>nd</sup> regime.<sup>6</sup> The passporting section briefly explains the main elements of the concept and discusses the main obstacles and challenges that currently preclude PPP providers from passporting their products to other MSs – namely certain prudential obstacles, tax law obstacles, and challenges arising from social and labour law.

While there do not seem to be major prudential obstacles for pure DC PPPs, the situation is more complicated with respect to DB products and DC with guarantees. Some aspects relevant for their cross-border provision are closely linked to MSs prudential regulation.

Tax law obstacles seem to have diminished to the extent that host Member States (**MSs**) cannot discriminate against foreign providers operating on the basis of the single European passport. However, differences in the tax regimes among MSs may still lead to double taxation of retirement capital.

The extent to which social and labour laws interact with 1<sup>st</sup> pillar bis systems poses challenges in Central and Eastern European countries in respect of the creation of a single market. EIOPA puts forward some proposals in this area.

The 2<sup>nd</sup> regime could serve as an alternative or parallel framework to passporting and thus help to develop the single market for PPPs. It should be designed in a way that accommodates the tax and possibly also other differences among MSs. It could enable transferability of accumulated capital and highly standardised product rules ensuring a high level of protection for PPP holders.

In order to develop a successful Single Market for PPPs, the interests of PPP holders have to be well protected. Therefore the final section of the Discussion Paper provides an overview of a possible framework for the protection of PPP holders, such as transparency, distribution and selling practices, professional requirements and product regulation. These aspects are (partly) built on PRIPs and on the on-going work on the revision of the IORP directive. Furthermore, the concepts discussed in this part may be also incorporated in the 2<sup>nd</sup> regime framework.

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<sup>6</sup> The 2<sup>nd</sup> regime is a EU legal framework outside the laws of MSs. It does not replace national rules and does not require transposition. The 2<sup>nd</sup> regime provides an alternative to existing MSs' legislation in a particular field. The 2<sup>nd</sup> regime is sometimes called as 28<sup>th</sup> regime in order to signal that it exists in parallel to legal regimes in 27 MSs. Due to the continuing enlargement process in EU, EIOPA prefers using the term "2<sup>nd</sup> regime".

## **Invitation for feedback**

EIOPA invites comments on any aspect of this paper and in particular on the specific questions summarised in Section 5. Comments are most helpful if they:

- respond to the question stated;
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

## **Next Steps**

This discussion paper seeks to collect stakeholders' views on what issues should be taken into account by EIOPA in the context of its work on creating a single market for PPPs. EIOPA will reconsider its policy approach in light of the responses received and, after doing so, submit a preliminary report to the COM outlining different options and related challenges.

### **3. General policy discussion on EU-wide framework for personal pension products**

#### **3.1 Scope of personal pension products**

3.1.1 Before analysing the possibilities for creating a single market for PPPs EIOPA finds it useful to clarify the scope of this exercise.

3.1.2 As a starting point EIOPA has used its Database of Pension Plans/Products<sup>7</sup> (hereafter referred to as the "Database") that provides an overview of retirement saving arrangements in EU Member States.

3.1.3 The Database shows that there is a large variety of pension products in the EU.<sup>8</sup> On the basis of information it contains and experiences of EIOPA members it is possible to conclude that the large majority of PPPs possesses the following common features<sup>9</sup>:

- 1) Individual membership – Employers do not play a role in establishing a PPP but may pay contributions to an individual PPP on behalf, or for the benefit, of the employee, self-employed person or other individual.
- 2) Payment of contributions to an individual account - PPPs are financed by contributions paid to an individual account by product holders themselves or by third parties on their behalf.
- 3) PPPs have an explicit retirement objective - often set out in income tax law or other national legal instruments;
- 4) The early withdrawal of accumulated capital is often limited or penalised;
- 5) Providers are private entities;
- 6) Funding - all PPPs are funded.

3.1.4 The Database also shows that more than half of the PPPs are Defined Contribution (DC) schemes. Only a small number of them are pure Defined Benefit (DB) schemes. The remainder of PPPs are variations to pure DC schemes, e.g. DC schemes with guarantees or DB contribution based schemes.

**Q1: Do you find the list of common features of PPPs identified by EIOPA complete? Would you add any other features (e.g. periodic income)?**

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<sup>7</sup> The database contains all non-public arrangements and investment vehicles having the explicit objective of retirement provision according to national social and labour law or fiscal legislation. Only 1st pillar pension plans managed by the State or public entities are excluded. The version of the Database of Pension Plans/Products published by EIOPA on .... (EIOPA Pensions Database) contains 46 personal plans/products and 14 plans/products with dual occupational and personal characteristics. For 11 of these 14 products it is actually not provided a distinction between occupational and personal lines (see Annexes 1 and 2).

<sup>8</sup> For detailed overview please refer to annex 1.

<sup>9</sup> Furthermore, the majority of PPPs offer multiple investment options.

**Q2: Do you think that EIOPA should focus more on DC or DB PPPs? What elements should be regulated for both types of PPPs in order to create a single market for PPPs?**

**Q3: Do you think that future regulation of PPPs should also include additional prudential requirements in cases where the provider of certain PPPs is already subject to European prudential regulation?**

**Q4: What advantages do you see in creating/improving a single market for PPPs?**

3.1.5 The OECD and EIOPA have made an effort in the past to define what a PPP is. Their definitions are provided below for further clarification of the scope of this exercise.

OECD PPP definition:

*"Access to these plans does not have to be linked to an employment relationship. The plans are established and administered directly by a pension fund or a financial institution acting as pension provider without any intervention of employers. Individuals independently purchase and select material aspects of the arrangements. The employer may nonetheless make contributions to personal pension plans. Some personal plans may have restricted membership.*

- *Mandatory personal pension plans: these are personal plans that individuals must join or which are eligible to receive mandatory pension contributions. Individuals may be required to make pension contributions to a pension plan of their choice – normally within a certain range of choices – or to a specific pension plan.*
- *Voluntary personal pension plans: participation in these plans is voluntary for individuals. By law individuals are not obliged to participate in a pension plan. They are not required to make pension contributions to a pension plan. Voluntary personal plans include those plans that individuals must join if they choose to replace part of their social security benefits with those from personal pension plans."*

Definition of PPP used in EIOPA's Database Guide for Compilation

*"PPP - a pension plan that hosts members only on an individual basis."*

The differences between both definitions are shown in the annex 3.

**Q5: Do you think that these definitions fully reflect the EU personal pension landscape? If the answer is negative, what changes would you suggest in the wording of the definitions? Which of the definitions is better?**

**Q6: In some countries when a Personal Pension contract is chosen by an employer, the pension remains under the regulatory regime for consumer financial services rather than falling wholly under the regime for workplace pensions. Do respondents believe that such pensions are personal pensions?**

## 3.2 Passporting of PPPs and related obstacles

3.2.1 Passporting in the area of EU financial services law is the right for an authorised financial institution (provider) to carry out its activities in any other European Economic Area (EEA) MS. The passport is based on the principles of mutual recognition of authorisation, equivalence of prudential supervision systems and home country control.<sup>10</sup> The activities that are 'passportable' are set out in the relevant single market legal instruments (directives/regulations).<sup>11</sup> An important precondition for passporting is the harmonisation of regulatory requirements applicable to providers at an EU level.

3.2.2 The EIOPA Database shows that according to the criterion of applicable EU law PPPs can be grouped into the following categories:<sup>12</sup>

- a) PPPs provided by institutions regulated by the Life Assurance Directive (LAD) (life insurance PPPs)
- b) PPPs provided by institutions regulated by the CRD (CRD PPPs)
- c) PPPs regulated by the UCITS Directive (UCITS PPPs)
- d) PPPs and/or providers unregulated at EU level. In general, for these products/providers European law is taken into account as an informal reference by the national legislator. These PPPs can be subdivided into three main sub-categories:
  - i. 1<sup>st</sup> pillar bis systems. This subject is elaborated on in the 'Social and labour law' section of this paper (p. 15).
  - ii. PPPs regulated in accordance with the IORP Directive. In a few cases the IORP Directive is voluntarily applied to PPPs that are closely linked to

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<sup>10</sup> There are two different passports:

- an 'establishment' passport: the provider establishes a physical presence (branch) in another EEA MS (the 'host' state);
- a 'services' passport: the provider carries out its permitted activities cross border, without establishing a physical presence in the host MS.

In order to start operating on a cross-border basis, the provider needs to notify its 'home supervisor' that it wishes to passport. The home supervisor then interacts with 'host supervisor' without necessity for provider to contact host supervisor.

On the basis of principle of home country control, 'home supervisor' is responsible for most of the supervision; the role of the 'host supervisor' is limited to supervising so called general good provisions of its national law related to business conducted within its territory.

<sup>11</sup> Currently there are following EU prudential frameworks that provide for sufficient degree of harmonisation and enable passporting:

- Markets in Financial Instruments Directive (for investment firms)
- UCITS Directive (for UCITS management companies)
- Insurance Mediation Directive (for insurance and reinsurance intermediaries)
- Third Non-Life Insurance and Consolidated Life Assurance Directives (for insurers)
- Reinsurance Directive (for reinsurers)
- IORP Directive

<sup>12</sup> Please note that the Database does not distinguish the legal framework applicable to products from legal framework applicable to providers.

occupational pension plans. The above implies that the same institution is allowed to provide both occupational and personal pensions plans.<sup>13</sup>

iii. PPPs that are (in part) subject to a UCITS-like national regime.

**Q7: How could a single market be developed for PPPs unregulated at EU level (e.g. cases where the IORP Directive is voluntarily applied to PPPs)?**

3.2.3 The analysis above shows that, at this moment in time, the existing EU legal instruments already provide a framework for cross-border operation for at least life insurance, UCITS and CRD PPPs (see letters a) – c) above). However, the providers may not use this opportunity possibly because of obstacles that prevent them from engaging in cross-border activity. One of the possible ways to establish a single market for PPPs is to identify and diminish these obstacles to passporting.

3.2.4 Passporting could, in theory, be supplemented by transferability. In general, transferability can be described as the right to transfer, before the payment of the retirement (or other) benefits, the capital accumulated in a PPP to another PPP.

3.2.5 The advantage of transferability is that it may develop competition between the providers and offer to the PPP holder a larger choice of PPPs. Nevertheless, it implies difficult technical and tax issues. Previous attempts to create a framework for transferability in the area of pensions have failed.

**Q8: Do you think that EIOPA should consider developing a framework for transferability of accumulated capital for passported PPPs? What obstacles to transferability can you identify and how can they be overcome? Can you identify the benefits of a transferability framework in the context of PPPs?**

Prudential obstacles

3.2.6 Prudential requirements applicable to PPP providers/products might differ among MSs with regard to specific aspects that remain non-harmonized in the EU framework. The following two examples related to life insurance PPPs illustrate this point:

**Example 1:** The maximum interest rate for insurance policies with a guaranteed interest rate is defined in national laws and therefore it may differ from one MS to another. If the maximum interest rate applicable in MS A is lower than in MS B, a provider with its seat in MS A will not be able to sell competitive products in MS B, as home country rule prevails. These differences

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<sup>13</sup> In this case, consideration should be given to the fact that applying one set of rules to occupational pension products and the IORP and another set to the PPPs, might place unnecessary burden upon the providers concerned.

in maximum interest rates may hinder cross-border provision of life insurance PPPs with guaranteed interest rate.

**Example 2:** The assumptions used for the calculation of technical provisions are subject to criteria defined at national level (for further information on these obstacles, please refer to annex 5). In presence of the same commitment in terms of PPP benefits, MS A and MS B could prescribe to have a different amount of technical provisions due to the different requirements in the assumptions (actuarial tables or interest rates, or other) to be used at national level. This topic is particularly relevant for PPPs with guarantees or for PPPs considering the pay-out phase.

**Q9: What are the prudential obstacles for creating a cross-border market for PPPs for different types of providers (banks, insurers, UCITS)?**

**Q10: Do you think it is feasible to develop a cross-border framework for PPPs with guarantees (DB PPPs and DC PPPs with guarantees)?**

#### Tax obstacles

Please note that EIOPA and its members do not exercise any powers in the area of taxation. The analysis in this section is based on publicly available information and carried out on a best effort basis.

3.2.7 Other possible obstacles that prevent the emergence of a single market for PPPs can be found in the area of taxation. Currently there is no specific EU legislation on the taxation of pensions. This area is covered by national laws and bilateral tax treaties between MSs. Therefore, pensions are taxed very differently across the EU. This raises various challenges to the creation of a single market for PPPs. In particular, the following four cross border tax issues can be identified:

**a) Differences among MSs in taxation of contributions paid to foreign<sup>14</sup> PPPs and benefits received from foreign PPPs**

3.2.8 Regarding the taxation of **contributions**, some MSs may have restricted the tax deductibility of contributions paid to providers that are not established in their territory, while allowing such deductibility for contributions paid to domestic providers. This can lead to unjustified discriminatory treatment on the basis of nationality.

3.2.9 Nevertheless, during the last decade many MSs have changed their national tax legislation by extending domestic tax relief to foreign providers, as a result of the adoption of the Commission's Pension Taxation Communication,<sup>15</sup> in the

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<sup>14</sup> The expression „foreign PPP“ should be construed as meaning a PPP provider that has a tax residence in MS different from MS where it distributes its PPPs.

<sup>15</sup> Commission of the European Communities, „Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: The elimination of tax obstacles to the

context of the IORP Directive implementation or, indeed, following CJEU case law<sup>16</sup> applicable to occupational as well as personal pensions.

3.2.10 As far as the **benefits** are concerned, however, the problem of non-discrimination may well pertain. There seems to be no case law of the CJEU forbidding the discrimination of foreign providers vis-à-vis domestic institutions in case of payment of benefits. Yet, since the payment of benefits is arguably a reversed situation to that of payment of contributions (already adjudicated at EU level) it can be assumed that the CJEU would come to the same conclusion and discrimination of foreign providers in the context of payment of benefits would be held to violate EU primary law.

3.2.11 Thus, in theory, these tax obstacles seem to be eliminated to the extent that MSs cannot discriminate against foreign providers.

### **b) Differences among MSs in taxation of investment income paid to foreign PPPs**

3.2.12 PPPs may be tax exempted in their MS of residence or receive a credit for withholding taxes levied on their domestic investment income (dividends, interest). Nevertheless, PPPs may suffer source taxation on their foreign investment income which, due to the domestic exemption regime, becomes a final tax burden.

3.2.13 The differential treatment of outbound investment income paid to foreign PPPs as compared to domestic investment income to local PPPs may constitute discrimination on the basis of nationality that is inconsistent with the free movement of capital, being one of the fundamental freedoms of the internal market.<sup>17</sup>

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cross-border provision of occupational pensions", Brussels, 19.4.2001 via <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0214:FIN:EN:PDF>

As noted in the Commission's Pension Taxation Communication, *much of the discussion in this Communication applies equally to third pillar pension and life assurance services.*"

<sup>16</sup> In case C-150/04 Commission v Denmark, judgement of 30 January 2007 the CJEU held that by *„introducing and maintaining in force a system for life assurance and pensions under which tax deductions and tax exemptions for payments are granted only for payments under contracts entered into with pension institutions established in Denmark, whereas no such tax relief is granted for payments made under contracts entered into with pension institutions established in other Member States the Kingdom of Denmark has failed to fulfil its obligations under Articles 39 EC [free movement of workers], 43 EC [freedom of establishment] and 49 EC [freedom to provide services]*".

<sup>17</sup> This conclusion has been confirmed in Case C-493/09 Commission v Portugal delivered on 6 October 2011 where the CJEU declared that *"[...] by reserving the benefit of the corporation tax exemption to pension funds resident in Portuguese territory alone, the Portuguese Republic has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the Agreement on the European Economic Area of 2 May 1992"*.

See also European Federation for Retirement Provision and PricewaterhouseCoopers „Executive summary of the report supporting the complaint filed with the EC „Discriminatory treatment of EU pension funds making cross-border portfolio investments in bonds and shares within the European Union", 2006 via <http://www.efrp.org/LinkClick.aspx?fileticket=A2oE2tzHLhQ%3D&tabid=1564>

For possible systemic solutions to this issue see report "Taxation of cross-border dividend payments within the EU: Impacts of several possible solutions to alleviate double taxation", 2012 written by Copenhagen Economics following the commissioning of a study by the European Commission,

3.2.14 Thus, in theory, this tax obstacle seems to be eliminated to the extent that MSs cannot discriminate against foreign providers.

### **c) Obstacles to transfer of accumulated capital**

3.2.15 When a participant wants to switch between PPPs or decides to change the provider of the PPP, a transfer of accumulated capital from a PPP in one MS to a PPP in another MS may be subject to the withholding tax in the exiting MS or may even be prohibited.

3.2.16 The Commission's Pension Taxation Communication concluded that there might be an infringement of the EU primary law if Member States tax cross-border transfers, while domestic transfers are tax free.

3.2.17 Furthermore, the CJEU confirmed that the taxation of transfers of accumulated capital to providers elsewhere in the European Economic Area (EEA), while such transfers are tax exempted in a domestic situation, amounts to discrimination on the grounds of nationality and violates the freedom to provide services.<sup>18</sup>

3.2.18 Thus, in theory, this tax obstacle seems to be eliminated to the extent that MSs cannot discriminate against foreign providers.

3.2.19 However, when domestic transfers are taxed, the MS from which the transfer is made is free to levy an exit tax on transferred capital. If the MS to which the transfer is made levies an entry tax on transferred capital, the transferred capital would be taxed twice. This double taxation would dissuade both providers and individuals from making the transfer. This situation is explained in more details in the next section.

### **d) Differences in MSs' tax arrangements**

3.2.20 Most MSs employ the so-called EET system (Exempt contributions, Exempt investment income and capital gains of the pension institution, Taxed benefits) or ETT principle (Exempt contributions, Taxed investment income and capital

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Directorate-General for Taxation and Customs Union via [http://ec.europa.eu/taxation\\_customs/resources/documents/common/consultations/tax/venture\\_capital/tax\\_crossborder-dividend-paym.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/venture_capital/tax_crossborder-dividend-paym.pdf) and European Commission's DG TAXUD.D2 Roadmap for initiative entitled "Tackling discrimination and double taxation of dividends paid across borders" 07/ 2012 via [http://ec.europa.eu/governance/impact/planned\\_ia/docs/2012\\_taxud\\_001\\_cross\\_border\\_dividends\\_en.pdf](http://ec.europa.eu/governance/impact/planned_ia/docs/2012_taxud_001_cross_border_dividends_en.pdf)

<sup>18</sup> In Case C-522/04 Commission v Belgium delivered on 5 July 2007 CJEU concluded that "levying tax [...] on transfers of capital or surrender values built up by means of employers' contributions or personal contributions for supplementary retirement benefits, where the transfer is made by the pension fund or insurance institution with which the capital or surrender values have been built up in favour of the beneficiary or persons entitled through him, to another pension fund or insurance institution established outside Belgium, while such a transfer does not constitute a taxable transaction if the capital or surrender values are transferred to another pension fund or insurance institution established in Belgium" is inconsistent with EU primary law on fundamental freedoms of internal market.

gains of the pension institution, Taxed benefits).<sup>19</sup> Other systems (such as TET, TEE, EEE) are less common, but can also be found across the EU.

- 3.2.21 The transfer of accumulated capital from a TEE/TTE MS to an EET/ETT MS can lead to double taxation. The double taxation is for example the result of the denial of tax relief for contributions made in MS A and the taxation of the pension in MS B. On the other hand, a transfer from EET/ETT system to a TEE/TTE system may lead to non-taxation.
- 3.2.22 Moreover even within the EET system, the requirements for tax deductibility vary widely from one MS to another and may be often limited to a certain level of income replacement or a fixed amount.
- 3.2.23 However, since the direct taxation is within the competence of individual MSs, the principle of non-discrimination under EU law is not applicable as such. Any change in this area would probably require harmonisation that would be conditional upon unanimous approval by the MSs. Alternatively, to prevent double taxation and non-taxation MSs could be encouraged to adopt unilateral domestic rules or adjust their existing tax treaties.

### **Implications of the four tax obstacles identified above for passporting and transferability**

- 3.2.24 As shown above, the income tax legislation in MSs should afford the same tax relief to foreign PPPs as it affords to its domestic PPPs (see points a) and b) above). Hence, this should provide sufficient comfort to the foreign providers in the passporting cross border framework.
- 3.2.25 In the case of transferability, different tax regimes applied to pensions in different MSs may lead to double taxation or non-taxation of transferred capital (see points c) and d) above). Overcoming these obstacles seems to require harmonisation of tax treatment of pensions across MSs possibly on the basis of EET system<sup>20</sup>.

**Q11: Have you identified any other tax obstacles in addition to the four identified by EIOPA? Can these obstacles be eliminated in practice?**

**Q12: According to your knowledge, how do MSs approach the principle of non-discrimination of foreign PPP providers in their national tax legislation as far as taxation of contributions, investments and benefits is concerned?**

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<sup>19</sup> [http://ec.europa.eu/taxation\\_customs/taxation/personal\\_tax/pensions/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/personal_tax/pensions/index_en.htm). See also „Pension systems in the EU – contingent liabilities and assets in the public and private sector“ a Survey requested by European Parliament’s Directorate General for Internal Policies, 2011, pg. 34, via <http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>

<sup>20</sup> EET seems to encourage retirement saving because accumulated pension savings are not taxed and income tax brackets are often lower during retirement (so called deferred taxation).

**Q13: In your opinion, is the principle of non-discrimination in taxation of financial products, as developed by the CJEU, sufficient on its own to remove the tax obstacle to the cross-border functioning of PPPs?**

**Q14: Do you consider that transferability requires harmonisation of the tax treatment of pensions across MSs? In your view, are such changes feasible?**

**Q15: What (tax) obstacles can you identify in cases where an individual who is a tax resident of state A and holds a PPP provided to state A on the basis of a cross border passport by provider with tax residence in state B, becomes a tax resident of state C?**

#### Social and labour law challenges

3.2.26 As PPPs are provided on an individual basis the social and labour law does not seem to pose a major challenge for passporting most PPPs, except in the case of 1<sup>st</sup> pillar bis PPPs.

3.2.27 In 1998 – 2006 many Central and Eastern European (**CEE**) countries introduced a pension reform aimed at reinforcing the sustainability of their pension systems. As part of these reforms, they established so called 1<sup>st</sup> pillar bis systems.<sup>21</sup>

3.2.28 First pillar bis systems were carved out of the public PAYG system, by diverting part of the contributions of the traditional 1<sup>st</sup> pillar PAYG system into 1<sup>st</sup> pillar bis pension funds managed by dedicated<sup>22</sup> private management companies. As the public pension contribution rate differs from MS to MS, so does the contribution rate diverted to the 1<sup>st</sup> pillar bis pension funds. The 1<sup>st</sup> pillar bis contribution rate is expressed as a percentage of the wage (eg. 4% in RO (with 0.5% yearly increase, until it reaches 6%), 2.8% in PL (with gradual increase up to 3.5% in 2017), 5 % in the universal pension funds in BG (7 % from 2017), 3% in CZ, 4% in SK, 6% in LV). The higher the contribution rate to 1<sup>st</sup> pillar bis is, the lower the contribution rate to the public PAYG system.

3.2.29 A 1<sup>st</sup> pillar bis pension fund is a product (a pool of assets) that in almost all CEE countries is currently allowed to be supplied exclusively by dedicated 1<sup>st</sup> pillar bis management companies. The provider is required by law to be established (i.e. have its registered office) in the country where it provides pension funds.

More detailed characteristics of 1<sup>st</sup> pillar bis systems are provided in Annex 4.

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<sup>21</sup> One CEE country (CZ) established 1<sup>st</sup> pillar bis in 2012.

<sup>22</sup> However, please note that in CZ and BG the 1st pillar bis funds are managed by 3rd pillar provider. In LV 1<sup>st</sup> pillar bis is managed by UCITS management companies.

3.2.30 Different MSs may regard aspects of their respective 1<sup>st</sup> pillar bis regulations as part of their social and labour law (e.g. eligibility criteria for membership,<sup>23</sup> with a possibility to pay additional contributions to the pension fund<sup>24</sup>). The extent of SLL components in 1<sup>st</sup> pillar bis systems depends largely on the interpretation of MSs. One could even argue that the majority of 1<sup>st</sup> pillar bis regulation falls under SLL due to the following reasons:

1. 1<sup>st</sup> pillar bis pension funds receive part of the social security contributions diverted from public PAYG system.
2. The contractual terms between members and management companies are governed by legal mandatory provisions at national level.
3. The participation in the 1<sup>st</sup> pillar bis pension funds is often mandatory and in most of CEE countries the law does not allow members to opt-out of the 1<sup>st</sup> pillar bis system. If an opt-out is possible, the 1<sup>st</sup> pillar bis contributions (assets) return to public system (1 pillar).

3.2.31 Therefore some may conclude that the 1<sup>st</sup> pillar bis providers and funds should be considered part of the wider social security system of the country. Since the responsibility for the overall organisation of social security systems falls within the competence of MSs, 1<sup>st</sup> pillar bis systems can be subject to harmonisation at EU level only in case of unanimous consent by MS.

3.2.32 On the other hand, there are also arguments in favour of bringing the 1<sup>st</sup> pillar bis under a harmonised EU framework that would enable passporting to other countries that organised their pension system in a similar fashion. These arguments can be summarised as follows:

1. The social and labour law has not prevented the creation of a cross-border framework for occupational pensions (IORP Directive).
2. As a majority of the management companies in the CEE MSs are subsidiaries of large global and pan-EU financial groups, allowing for cross-border operation could lead to cost savings at the level of providers. These savings could be translated in lower fees charged by management companies to members. On the other hand, the fees charged by providers are capped by national 1<sup>st</sup> pillar bis legislation at quite low levels compared to the UCITS sector.

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<sup>23</sup> Membership in the 1<sup>st</sup> pillar bis pension fund can be either mandatory, voluntary or a combination of both. In some MS membership is mandatory (eg. PL), in other MS it is voluntary (eg. CZ, SK) and in other MS it is a combination of both (eg. RO, where is mandatory for new entrants in the labour market, but only for those under 35 years, and voluntary for those between 35-45 years, LV). In MS where membership is mandatory, if the eligible member doesn't choose a pension fund in a certain time frame than he/she is randomly allotted to one of the exiting pension funds.

<sup>24</sup> Additional contributions may be allowed, forbidden or required. In some cases it is mandatory for the member to pay a contribution to the pension fund beside the contribution diverted from the public pension contribution (eg. 2% in CZ). In other cases a member may pay additional contribution and is motivated to do so by tax advantage (e.g. SK). In other MS is not possible for members to make additional contributions at all (eg. RO).

3. Common investment rules could enable pooling of assets at cross-border level that could in turn enable better utilisation of economies of scale and possibly lead to higher yields for members.
4. Providers of 1<sup>st</sup> pillar bis products invest the savings of their members in financial instruments. Subjecting them to an EU regulatory framework could ensure the level of protection to 1<sup>st</sup> pillar bis members similar to that of PPP holders of other providers that are under the existing EU framework. It should be noted however that the national legislation of the MSs, where 1<sup>st</sup> pillar bis pension funds were introduced, contains detailed requirements for their activity, and that they are subject to supervision by the national authorities.

**Q16: Do you see the need of the creation of a single market for products 1st pillar bis? What would be the benefits of creating a single market for 1st pillar bis products? How could the challenges posed by existing social and labour law be overcome, in particular in the Member States which have no products 1st bis?**

**Q17: How could a single market be developed for PPPs unregulated at EU level? Should it be based on the IORP Directive or another directive?**

**Q18: Taking into account the fact that the contributions to the 1st pillar bis products, come from diverting part of the contributions of the traditional public 1st pillar PAYG system, would it be feasible to create a passporting regime for providers of 1st pillar bis PPPs?**

**In particular do you think that EIOPA should consider the possibility to create a framework for cross-border management of 1st pillar bis schemes.**

**If the answer is positive, do you think that EIOPA should consider the possibility to create a framework for cross-border management of 1st pillar bis schemes based on the principles of UCITS Management Company passport? (Art. 16 to 21 of the Directive 2009/65/EC).**

**If the answer is positive, how would the UCITS Management Company passport need to be modified for 1st pillar bis managers to take into account specificities of 1st pillar bis?**

#### Other obstacles

3.2.33 Other obstacles to passporting could be found in the "applicable law" that has to respect legal provisions protecting the general good in the MS of commitment (E.g. Art 32 and 33 of LAD) which might differ in different MSs.

**Q19: Can you identify any other obstacles to passporting of PPPs? How can these obstacles be overcome?**

### 3.3 Second regime<sup>25</sup> (also known as the 28<sup>th</sup> regime)

- 3.3.1 According to the mandate from the COM, EIOPA should consider the possibility to develop a single market for PPPs through a so called 2nd regime. The 2nd regime is a body of law enacted by the European legislator in a particular field of law. The 2nd regime creates an alternative uniform European system to different national regimes. The 2nd regime does not replace existing national level rules, but offers an alternative to them. Private parties (providers and PPP holders) can choose which of the two bodies of law will govern their legal relations.
- 3.3.2 The 2nd regime must always have the form of a Regulation.<sup>26</sup> Only this type of instrument guarantees that one set of rules is applied consistently across the EU. As private parties are free in their choice to use the 2nd regime, it would only be chosen if both parties (provider and individual) agree to use it.
- 3.3.3 Ideally the 2nd regime would encompass the following elements:
- a) The accommodation of national tax regimes;
  - b) A system of individual accounts of participants;
  - c) A robust consumer protection framework with PRIPs as a benchmark;
  - d) The supervision of prudential aspects by home country supervisors and the supervision of consumer aspects by host country supervisors;
  - e) The transferability of accumulated savings without taxation of transfer value (subject to agreement by MSs).
- 3.3.4 One advantage of the 2nd regime is that it might be possible to implement it without harmonisation of national tax legislation. To this end, a MS could conclude an agreement with a provider operating under 2nd regime setting out the obligations of the provider in terms of, for example, the provision of information and the collection of taxes.
- 3.3.5 The product provided under the 2nd regime should be highly standardised to ensure that it is obvious when the "same kind of product" is sold by different providers, both within the same country and on a cross-border basis. The question can be asked if operation of business under a 2<sup>nd</sup> regime should be subject to prior authorization by the competent authority, or to some well defined upfront prudential constraints. In that case the prudential constraints could be part of a 2<sup>nd</sup> regime regulation or the 2<sup>nd</sup> regime products could be

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<sup>25</sup> This part on the *Second regime* builds on the Commission's Pension Taxation Communication and the report of the European Financial Services Roundtable "Pan-European Pensions Plans – from concept to action", 2007, available at <http://www.efr.be/documents%5Cpublication%5C76309EPP%202007.pdf>.

<sup>26</sup> Examples of existing 2nd regime regulations include:

- Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)
- Regulation 1257/2012 Implementing Enhanced cooperation in the area of the creation of unitary patent protection
- Regulation 1260/2012 Implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements

allowed to be provided only by providers falling under any of the existing prudential frameworks (CRD, UCITs, IORP,...)

### **Advantages of the 2nd regime in general**

#### 3.3.6 A 2nd regime

- Expands options for businesses and citizens operating in the single market;
- Provides a reference point and an incentive for the convergence of national regimes over time;
- Enables the development of a single market in parallel with national systems, thus preserving national specificities.

### **Disadvantages of the 2nd regime in general**

#### 3.3.7 However

- Due to the complexity of the 2nd regime, its implementation might be burdensome for both providers, but especially for supervisors. It would increase administrative costs of supervision because of the need to run two regimes in parallel – a national and a European one;
- By being optional and by applying only to individuals and providers rather than MSs, it would only add to the complexity by introducing yet another regime, alongside all existing national regimes
- The development of the 2nd regime is likely to take a long time with no guarantee of ever having the desired effect.

**Q20: Would passporting alone be sufficient a framework for the cross-border provision of PPPs or should EIOPA work on a 2<sup>nd</sup> regime as well? Which approach do you consider more appropriate to develop a single market in the field of PPPs?**

**Q21: How should the 2<sup>nd</sup> regime be designed so that it becomes a standard that can compete with other PPPs and attract a critical mass of demand from providers and individuals?**

**Q22: How could the 2<sup>nd</sup> regime accommodate the tax differences among MSs? Do you see other national differences that the 2nd regime should address? If yes, how could this be done?**

**Q23: How would you design the main elements of the 2nd regime, in particular:**

- **rules applicable to providers**
- **accumulation phase (pure DC, DC with guarantees, DB or hybrid?)**
- **pay-out phase including benefits (e.g. should the benefits include only annuities, or also programmed withdrawals and lump sum payments?)**

- **product design (e.g. investment rules)**
- **consumer protection aspects.**

**Q24: Should the 2nd regime comprise product rules only or product and providers rules? Should the 2<sup>nd</sup> regime prefer only certain types of risk sharing arrangements, e.g. DC? If the answer is positive, what would be the implications for the design of the 2<sup>nd</sup> regime?**

**Q25: If a 2nd regime for PPPs were to include prudential rules, do you think that it is possible to define a common way to calculate technical provisions for different types of providers? Do you think the capital needed for such activities could be the same for the different type of providers?**

## 4. General policy discussion on Consumer Protection aspects

- 4.0.1 In order to develop a successful single market for PPPs, the interests of PPP holders have to be well protected. Therefore this section provides an overview of some possible frameworks for the protection of PPP holders. It builds on the previous work of EIOPA, namely in the context of the Call for advice on the review of the IORP Directive and the PRIPs initiative. The concepts discussed in this section may be incorporated in the 2<sup>nd</sup> regime framework.
- 4.0.2 Retirement planning is a difficult issue for most people. At the same time, saving and planning for retirement is one of the most important elements of lifetime financial planning. Therefore consumer protection in this area is essential. The main question raised in this section is: What regulation is needed in order to introduce transparency, fairness and appropriateness of PPPs? For the purposes of this section, consumers, both holders and potential holders of personal pensions, are referred to in the paper as PPP holders.
- 4.0.3 The question of what regulation is needed to introduce transparent, fair and appropriate PPPs can be divided into several sub questions:

**Transparency and Information Disclosure:** What information requirements are needed for PPP holders? What information should be presented in order to help them to make sensible decisions and when, how, and in what form, should this information be presented?

**Distribution and selling practices:** What level of protection is needed in the distribution process? Which requirements are needed to prevent conflicts of interest from adversely affecting the interests of PPP holders? What other requirements are needed, for example with respect to complaints handling?

**Professional requirements:** What professional requirements should PPP distributors meet?

**Product regulation:** What role can product regulation for PPPs play?

### 4.1 Transparency and information disclosure

- 4.1.1 The issue of transparency and information disclosure has been central in the recent Call for advice by the COM for the Revision of the IORP directive and in the Reply provided by EIOPA (February 2012).<sup>27</sup>
- 4.1.2 EIOPA supported the adoption of a “Key Information Document” (KID) at joining and of an annual statement throughout the accumulation phase,

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<sup>27</sup> In particular, Chapter 29 of the Reply discussed how to strengthen the information requirements for members of DC pension plans.

together with pension projections. This discussion, though originally made in the context of occupational pensions, is also a good starting point for PPPs.

- 4.1.3 Indeed, information needs to support a PPP holder as much as possible in making sensible decisions about PPPs. Therefore, the PPP holders need information throughout different phases of the contract.
- 4.1.4 Information needs to be useful to allow a PPP holder to make sensible choices about areas such as contribution rates, switches between providers and investment options. Specific consideration can also be given to pre-retirement information, where different benefit payment options are available. It may also be useful to consider information provision to beneficiaries during the pay-out phase.
- 4.1.5 Therefore information requirements should ensure that a PPP holder is informed throughout different phases. Rules on advertisement should also be taken into account.
- 4.1.6 Pre-contractual information should enable PPP holders to compare different PPPs and to assess whether the product fits their personal preferences. Key questions in the pre-contractual phase will include: "Is this a good pension product?" and "Will the product provide outcomes that fit my personal preferences?" Questions that arise during both the pre-enrolment and on-going phase include: "Will my pension be sufficient to meet my demands and needs? If not, how much will the shortfall be and what can I do to improve the situation?"
- To be effective, information needs to be able to answer key questions, while also taking human characteristics into account. This means taking into account that humans are not "homo economicus"; they have limited time, and they often use rules of thumb to quickly process information.
- 4.1.7 One possible way for the information to be effective and not to overwhelm PPP holders, is through the principle of layering. This has been acknowledged in **EIOPA's report on good practices on information provision for DC schemes**, 24 January 2013.
- 4.1.8 In a first layer of information PPP holders should be able to find answers to key questions covering essential information (i.e. information that PPP holders must know).
- 4.1.9 In this respect, EIOPA considers it of vital importance that prospective PPP holders are informed extensively about **the cost** of the PPP they are considering to buy. In the context of occupational pensions EIOPA advised:

A specific important point will be that of cost disclosure, with the need to provide consistent concepts of "ex-ante" costs, to be disclosed in the KID document, and "actually levied" costs, to be disclosed ex-post in the annual statements. The issue of

disclosing investment transactions costs should be specifically considered.

- 4.1.10 Subsequent layers should provide information which is important but not essential (i.e. information that PPP holders should know) and information which is nice to have. Consumers who are overwhelmed with information tend to neglect information; layering is a way to overcome this problem.
- 4.1.11 Pre-contractual disclosure rules need to contribute to consumers making sensible decisions based on standardised comparable key information. There are various examples of formal disclosure requirements in the forms of Product Information Sheets, Key Investor Information (KII) and Key Information Documents (KIDs). These set requirements that the format and language have to be consumer friendly and presented in a manner that allows for the comparison of different products. Information should be presented in such a way that it is clear, fair and not misleading to the consumer.
- 4.1.12 The decisions PPP holders make with regard to their pension benefits in the lead-up to retirement can have a significant impact on the adequacy of their retirement income. Finally, in the pay-out phase certain decisions might be necessary and PPP holders need information. Therefore information requirements should ensure that a PPP holder is informed throughout different phases up to retirement.
- 4.1.13 Information needs to be useful in order to make decisions with regard to the different choices that are available: contribution rates, switches between providers and investment options. Specific benefit payment options are available. Information provision to beneficiaries during the pay-out phase could also be envisaged. And finally, rules on advertisement should be taken into account.
- 4.1.14 Tracking services can be an additional tool to consider. With tracking services we mean services (tools available on a website) that give a full overview of people's pension entitlements. All the information can be found in one place and can be accessed by the tool. The **Commission's White Paper on pensions** already indicates that tracking services can provide citizens with accurate and up-to-date information about pension entitlements, as well as projections of their income after retirement from statutory and occupational pension schemes. Personal pension schemes could also be included in these services, in order to cover all three pension pillars. These services could be provided at national level or be connected into an EU system of tracking services (possibly at a later stage), as already envisaged by the Commission in the White Paper on pensions. Alternative initiatives that go further than tracking alone could be the provision of an up-to-date internet environment (website) where consumers can obtain and access information and also see the results of certain decisions (or life events) for the pension.

**Q26: What information requirements are needed to protect PPP holders? What information should be presented in order to help them make sensible decisions and when and how should this information be presented? What are the differences to be considered with respect to the advice given by EIOPA to COM for the revision of the IORP Directive (occupational pensions)?**

4.1.15 The following section provides stakeholders with the opportunity to give their detailed views on transparency, disclosure and other consumer aspects related to PPPs.

#### **4.1.1 Pre-contractual information**

##### **Content**

**Q27: In the pre-contractual phase, what 'must' PPP holders know about the personal pension product before purchasing it and what "should" they know? What further information should be available and easy to find?**

**Q28: If a layering of information is introduced, what information should be included in the different layers outlined above ("must know")? What information should be included in the subsequent layers ("should know" and "nice to know")? What is the best way to make it easy for PPP holders to find their way through the different layers?**

**Q29: What key questions identified in the area of occupational pensions ("Will my pension be sufficient for my demands and needs? If not, how much will the shortfall be and what can I do to improve the situation?") might be relevant for personal pensions?**

In **EIOPA's advice to the European Commission on the review of the IORP Directive** 2003/41/EC, EIOPA stated (p. 494 – 502) that a KII like document could be appropriate for members of occupational DC schemes where members bear the investment risk and have choices to make. EIOPA explored which elements of the KII from the UCITs Directive could be used for IORPs as regards pre-contractual information. The following items were regarded as appropriate for members of occupational DC schemes: 1) identification of the IORP 2) objectives and investment policies 3) performance scenarios 4) costs and charges 5) risk/reward profile 6) contributions 7) practical information 8) cross-references.

In the report on **Good practices on information provision for DC schemes** of 24 January 2013, EIOPA further built on this Advice. EIOPA argued on p. 61 that the format of the pre-enrolment information and annual statement, in particular the first layers of information, should support (potential) members to make decisions. The starting point for policymakers should be to decide what the 'behavioural purposes' of the information are i.e. what consumers need to 'do' with the information.

EIOPA has addressed the difficulties with the risk-profile of different investment options. In **EIOPA's advice on the review of the IORP Directive**, EIOPA stated (p. 499):

Letter e) of art. 78.3 requires the presentation of a risk/reward profile. For pension schemes, this is much trickier than for most financial instruments as it implies an assessment of risk of different investment policies and asset allocations across different time horizons, up to the very long term [...]

In other terms, while it is in principle important to attribute a risk label to different investment options, the relative ranking of these options may be conditioned to the time horizon of the member and may not be an objective characteristic of the option itself. A possibility worth exploring is to label the investment options according to their investment horizon and not to the level of risk.

**Q30: Will a KII/KID like document be appropriate for personal pensions as has been advised by EIOPA on the review of the IORP Directive? What would be the behavioural purpose?**

**Q31: Could a good reference for risk-reward profiles be defined for personal pensions? To what extent do you find the risk reward used in the UCITs Directive appropriate for PPPs? What other examples could be considered?**

**Q32: For PPPs, could the investment horizon (as in "data target" funds) provide a better guidance for potential members, against the risk-reward ranking that is used for UCITs?**

**Q33: What information should be provided in respect of costs? Should it be consistent between ex-ante and actually levied costs? Should it include investment transactions costs? What is the best way to present this information?**

**EIOPA's Good practices on information provision for DC schemes report** showed the importance of pension projections for members. On p. 64 EIOPA states the following:

... it is important to note that an accrued balance, the total amount of pension savings, is not meaningful or easy interpretable for DC scheme members. It does not give an answer to whether it will provide sufficient income. Members need support to understand the value of these figures. The annual statement should provide at least the answer to the key questions which are posed above. Pension projections should be provided in euros (or the currency of the country) and in terms of purchase power. Research suggests that – for information which is provided on paper – showing three scenarios (positive, neutral, negative) may be effective.

**Q34: Do you consider the presentation of illustrative pension projections a useful tool to understand the risks and performance of the product? If yes, please state how and when pension projections should be provided?**

**Q35: Which tools and types of information would best ensure an optimal source of easily available and useful information with a view to providing an overview of personal pension entitlements for consumers?**

#### **Format and delivery method**

**Q36: What are the mediums through which pre-contractual information should be presented (paper, other durable medium, internet)? In which cases should the different mediums be used?**

**Q37: To what extent should the format of information be standardized? What features and/or choices that can be made determine the need for a more flexible presentation of pre-contractual information?**

#### **4.1.2 Promotional material/marketing communications/advertising**

**Q38: What should be the requirements with respect to promotion materials/marketing communications/advertising of PPPs?**

**Q39: What regulation can be a source of inspiration for personal pensions?**

#### **4.1.3 On-going information**

#### **Content**

**Q40: What information should be actively provided during the accumulation phase?**

**Q41: If a layering of information is introduced, what information should be included in the first layer ("must know") and in the subsequent layers ("should know" and "nice to know")? What is the best way to make it easy for PPP holders to find their way through the different layers?**

**Q42: Do you consider the presentation of illustrative pension projections a useful tool to understand the risks and performance of the product? State how and when pension projections should be provided if you think they would be useful.**

**Q43: What information should be provided on switching and before termination?**

**Q44: Should/could information cover the other pillars (i.e. overview of the first, second and third pillar pension)? Can this be achieved? If so, how?**

**Q45: What do you think of tracking services? What are good examples of tracking services?**

**Format, delivery method and frequency**

**Q46: To what extent should the format of information be standardized? What features determine the need for a more flexible presentation of on-going information?**

**Q47: What are the mediums through which on-going information should be presented?**

**Q48: What is the appropriate frequency for presenting on-going information (e.g. annually)?**

**Q49: Which circumstances can require specific information provision (e.g. life events, contractual, taxation or regulatory changes, etc.)?**

**Q50: Is there any kind of information (or additional information) that should be provided on request?**

**Q51: Can on-going information requirements be connected with the implementation of tracking services? How?**

**4.1.4 Pre-retirement information**

**Q52: Should there be additional disclosure requirements for PPP holders that are approaching retirement? If so, what information should be provided (e.g. regarding benefit payment options, taxation implications)?**

**Q53: If a layering of information is introduced, what information should be included in the first layer ('must know') and in the subsequent layers ('should know' and 'nice to know')? What is the best way to make it easy for PPP holders to find their way through the different layers?**

**4.1.5 Pay-out phase information**

**Q54: Should there be additional disclosure requirements for the pay-out phase? If so, what information should be provided?**

**Q55: If a layering of information is introduced, what information should be included in the first layer ("must know")? And in the subsequent layers ("should know" and "nice to know")? What is the best way to make it easy for PPP holders to find their way through the different layers?**

## **4.2 Distribution and selling practises**

4.2.1 The purpose of distribution rules is to contribute to distributors giving appropriate information and advice to PPP holders and to ensure that actual or potential conflicts of interest do not lead to consumer detriment. Distribution rules ensure consumer protection by setting requirements for the sale of products, making sure these are in the best interests of the consumer. For personal pensions, it is also important to consider what advice standards should apply to ensure that the service/product is the most suitable choice for the PPP holders based on their demands and needs.

**Q56: What level of protection is needed in the distribution process? What is needed in order to prevent conflicts of interest from adversely affecting the interests of PPP holders?**

**Q57: Are there existing examples of EU regulation that cover this area already (for example the MiFID and IMD2 conflict of interest rules on selling practices)? What would be the reasons to deviate from the distribution rules in IMD2 or MiFID? Are there requirements elsewhere that would provide appropriate protection for PPP holders?**

**Q58: How should selling practices (including advice) for PPPs be regulated?**

**Q59: Is the concept of MiFIDs 'suitability'<sup>28</sup> also fit for personal pensions? If not, how can it be made fit for personal pensions?**

**Q60: What conflict of interest rules should apply (e.g. organisational/administrative requirements, together with disclosure and remuneration requirements)?**

**Q61: What information requirements should apply with respect to the service rendered by distributors? What information needs to be given to the PPP holders in case of advice (e.g. firm status disclosure, assessment of demands and needs of the PPP holder)?**

**Q62: Are, and if yes, what requirements are needed with regard to complaints handling?**

**Q63: Are there existing examples of EU regulation that cover this area already? Would IMD1 – as well as the upcoming IMD2 – provide a good source of possible inspiration for distribution rules for personal pensions? What about MiFID I and II?**

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<sup>28</sup> Assessing suitability means investment firms must obtain the necessary information - information on objectives, financial situation and knowledge and experience - in order to assess the suitability of any investment for that client.

### 4.3 Professional requirements

4.3.1 Professional requirements are essential in the distribution process of personal pensions. The aim is to ensure that those parties involved in the distribution process (providers and advisors) have the required knowledge and ability to deal with these products.

**Q64: What professional requirements would be appropriate? Is there a need for high level principles or more detailed regulation?**

**Q65: What should be the scope of these requirements? Should they apply on a continuous basis with a requirement to update them regularly?**

**Q66: Are there existing examples of EU regulation that cover this area already? For example, the existing knowledge and ability requirements in Article 4, IMD1 and in the IMD2 proposal are defined as a result-oriented obligation where that knowledge and ability must be appropriate "to complete their tasks and perform their duties adequately, demonstrating appropriate professional experience relevant to the complexity of the products they are mediating". Would this be a good source of inspiration for personal pensions? What about MiFID I and II?**

**Q67: What would be the reasons to deviate from the protection level envisaged in IMD2? Should factors such as taxation of pension' products play a role in determining the level of knowledge required?**

### 4.4 Product regulation

4.4.1 In recent years, consumers in Europe have been confronted with financial products that did not meet their expectations. Different national approaches and initiatives have been taken to address this issue. For example, regulation on product development processes has been introduced to ensure that appropriate procedures and policies are put in place. These rules have to ensure that balanced consideration will be given to the interests of consumers during the development phase of products. Therefore they relate to the product development process of product manufacturers and do not require any prior product approval by regulators.

4.4.2 Other regulation does require (prior) product approval by regulators. Across the EU initiatives have been taken to introduce certified (or standardized) products. These products have to meet specific criteria before they are able to be classified as a standardized product. An authority (government, regulator or industry) has to approve or accredit standardized products.

4.4.3 Also at a European level, several initiatives have been taken by the European Commission and the European Parliament to introduce rules for product development and product banning, for example in MiFID and PRIIPS. The COM is

also interested in this question, as it refers to the possible certification of personal pensions products in its **White paper on pensions**. Meanwhile the Joint Committee of the ESA's is aiming to develop high level principles for product development.

4.4.4 In the context of PPPs, product regulation may also have a positive role in order to encourage the development of "critical mass" and economies of scale (for instance in the context of the 2nd regime) or to help auto-enrolment mechanisms.

**Q68: What could be the role of product regulation in the context of PPPs?**

**Q69: Would you consider it useful if principles are established for the steps and considerations the industry should take into account before launching a new product or modifying existing products? If so, what would, in your view, be the main considerations that should be taken into account? Could these initiatives help develop "critical mass" and economies of scale, and/or the development of auto-enrolment mechanisms?**

**Q70: Would you consider it useful if certified products are introduced in the context of personal pensions? Should they be introduced at a European or a national level? What initiatives at European level would you consider to be useful?**

**Q71: What role could be played by product authorization and or product banning, in order to protect holders against certain PPPs that are more likely to lead to poor pension outcomes?**

## **5 Summary of Questions**

### **Scope of personal pension products**

Q1. Do you find the list of common features of PPPs identified by EIOPA complete? Would you add any other features (e.g. periodic income)?

Q2. Do you think that EIOPA should focus more on DC or DB PPPs? What elements should be regulated for both types of PPPs in order to create a single market for PPPs?

Q3. Do you think that future regulation of PPPs should also include additional prudential requirements in cases where the provider of certain PPPs is already subject to European prudential regulation?

Q4. What advantages do you see in creating/improving a single market for PPPs?

Q5. Do you think that these definitions fully reflect the EU personal pension landscape? If the answer is negative, what changes would you suggest in the wording of the definitions? Which of the definitions is better?

Q6. In some countries when a Personal Pension contract is chosen by an employer, the pension remains under the regulatory regime for consumer financial services rather than falling wholly under the regime for workplace pensions. Do respondents believe that such pensions are personal pensions?

### **Tax obstacles**

Q7. How could a single market be developed for PPPs unregulated at EU level (e.g. cases where IORP Directive is voluntarily applied to PPPs)?

Q8. Do you think that EIOPA should consider developing a framework for transferability of accumulated capital for passported PPPs? What obstacles to transferability can you identify and how can they be overcome? Can you identify the benefits of a transferability framework in the context of PPPs?

Q9. What are the prudential obstacles for creating a cross-border market for PPPs for different types of providers (banks, insurers, UCITS)?

Q10. Do you think it is feasible to develop a cross-border framework for PPPs with guarantees (DB PPPs and DC PPPs with guarantees)?

### **Prudential obstacles**

Q11. Have you identified any other tax obstacles in addition to the four identified by EIOPA? Can these obstacles be eliminated in practice?

Q12. According to your knowledge, how do MSs approach the principle of non-discrimination of foreign PPP providers in their national tax legislation as far as taxation of contributions, investments and benefits is concerned?

Q13. In your opinion, is the principle of non-discrimination in taxation of financial products, as developed by CJEU, sufficient on its own to remove the tax obstacle to the cross-border functioning of PPPs?

Q14. Do you consider that transferability requires harmonisation of the tax treatment of pensions across MSs? In your view, are such changes feasible?

Q15. What (tax) obstacles can you identify in cases where an individual who is a tax resident of state A and holds a PPP provided to state A on the basis of of cross border passport by provider with tax residence in state B, becomes a tax resident in state C?

### **Social and labour law challenges**

Q16. Do you see the need of the creation of a single market for products 1st pillar bis? What would be the benefits of creating a single market for 1st pillar bis products? How could the challenges posed by existing social and labour law be overcome, in particular in the Member States which have no products 1st bis?

Q17. How could a single market be developed for PPPs unregulated at EU level? Should it be based on the IORP Directive or another directive?

Q18. Taking into account the fact that the contributions to the 1st pillar bis products, come from diverting part of the contributions of the traditional public 1st pillar PAYG system, would it be feasible to create a passporting regime for providers of 1st pillar bis PPPs? In particular do you think that EIOPA should consider the possibility to create a framework for cross-border management of 1st pillar bis schemes. If the answer is positive, do you think that EIOPA should consider the possibility to create a framework for cross-border management of 1st pillar bis schemes based on the principles of UCITS Management Company passport? (Art. 16 to 21 of the Directive 2009/65/EC).

If the answer is positive, how would the UCITS Management Company passport need to be modified for 1st pillar bis managers to take into account specificities of 1st pillar bis?

### **Other obstacles**

Q19. Can you identify any other obstacles to passporting of PPPs? How can these obstacles be overcome?

### **Disadvantages of the 2nd regime in general**

Q20. Would passporting alone be sufficient framework for cross-border provision of PPPs or should EIOPA work on 2nd regime as well? Which approach do you consider more appropriate to develop a single market in the field of PPPs?

Q21. How should the 2nd regime be designed so that it becomes standard that can compete with other PPPs and attract a critical mass of demand from providers and individuals?

Q22. How could the 2nd regime accommodate the tax differences among MSs? Do you see other national differences that the 2nd regime should address? If yes, how could this be done?

Q23. How would you design the main elements of the 2nd regime, in particular:

- rules applicable to providers

- accumulation phase (pure DC, DC with guarantees, DB or hybrid?)
- pay-out phase including benefits (e.g. should the benefits include only annuities, or also programmed withdrawals and lump sum payments?)
- product design (e.g. investment rules)
- consumer protection aspects.

Q24. Should the 2nd regime comprise product rules only or product and providers rules? Should the 2nd regime prefer only certain types of risk sharing arrangements, e.g. DC? If the answer is positive, what would be the implications for the design of the 2nd regime?

Q25. If a 2nd regime for PPPs were to include prudential rules, do you think that it is possible to define a common way to calculate provisions for different types of providers? Do you think the capital needed for such activities could be the same for the different type of providers?

### **Transparency and information disclosure**

Q26: What information requirements are needed to protect PPP holders? What information should be presented in order to help them make sensible decisions and when and how should this information be presented? What are the differences to be considered with respect to occupational pensions and to the advice given by EIOPA to COM for the revision of the IORP Directive?

### **Pre-contractual information**

Q27. In the pre-contractual phase, what 'must' PPP holders know about the personal pension product before purchasing and what "should" they know? What further information should be available and easy to find?

Q28. If a layering of information is introduced, what information should be included in the different layers outlined above ("must know")? What information should be included in the subsequent layers ("should know" and "nice to know")? What is the best way to make it easy for PPP holders to find their way through the different layers?

Q29. What key questions identified in the area of occupational pensions (Will my pension be sufficient for my demands and needs? If not, how much will the shortfall be and what can I do to improve the situation?) Might be relevant for personal pensions?

Q30. Will a KII/KID like document be appropriate for personal pensions as has been advised by EIOPA on the review of the IORP Directive? What would be the behavioural purpose?

Q31: Could a good reference for risk-reward profiles be defined for personal pensions? To what extent do you find the risk reward used in UCITs Directive appropriate for PPPs? What are other examples to consider?

Q32: For PPPs, could the investment horizon (as in "data target" funds) provide a better guidance for potential members, against the risk-reward ranking that is used for UCITs?

Q33. What information should be provided in respect of costs? Should it be consistent between ex-ante and actually levied costs? Should it include investment transactions costs? What is the best way to present this information?

Q34. Do you consider the presentation of illustrative pension projections a useful tool to understand the risks and performance of the product and state how and when pension projections should be provided if you think they would be useful?

Q35. Which tools and type of information would best ensure consumers an optimal source of easily available and useful information with a view to providing an overview of personal pension entitlements?

### **Format and delivery method**

Q36. What are the mediums through which pre-contractual information should be presented (paper, other durable medium)? In which cases should the different mediums be used?

Q37. To what extent should the format of information be standardized? What features and or choices that can be made determine the need for a more flexible presentation of pre-contractual information?

Q38. What should be the requirements with respect to promotion material/marketing communications/advertising of personal pension products?

Q39. What regulation can be a source of inspiration for personal pensions?

### **On-going information**

Q40. What information should be actively provided in the ongoing phase?

Q41. If a layering of information is introduced, what information should be included in the first layer ("must know")? And in the subsequent layers ("should know" and "nice to know")? What is the best way to make it easy for PPP holders to find their way through the different layers?

Q42. Do you consider the presentation of illustrative pension projections a useful tool to understand the risks and performance of the product? How and when pension projections should be provided if you think they would be useful.

Q43. What information should be provided on switching and before termination?

Q44. Should/could information cover the other pillars (i.e. overview of the first, second and third pillar pension)? Can this be achieved? If so, how?

Q45. What do you think of tracking services? What are good examples of tracking services?

### **Format, delivery method and frequency**

Q46. To what extent should the format of information be standardized? What features determine the need for a more flexible presentation of on-going information?

Q47. What are the mediums through which ongoing information should be presented?

Q48. What is the appropriate frequency for presenting on-going information (e.g. annually)?

Q49. Which circumstances can require specific information provision (e.g. life events, contractual, taxation or regulatory changes, etc.)?

Q50. Is there any kind of information (or additional information) that should be provided on request?

Q51. Can on-going information requirements be connected with the implementation of tracking services? How?

### **Pre-retirement information**

Q52. Should there be additional disclosure requirements for PPP holders that are approaching retirement? If so, what information should be provided? Include (e.g. regarding benefit payment options, taxation implications)?

Q53. If a layering of information is introduced, what information should be included in the first layer ('must know')? And in the subsequent layers ('should know' and 'nice to know')? What is the best way to make it easy for PPP holders to find their way through the different layers?

### **Pay-out phase**

Q54. Should there be additional disclosure requirements for the pay-out phase? If so, what information should be provided?

Q55. If a layering of information is introduced, what information should be included in the first layer ("must know")? And in the subsequent layers ("should know" and "nice to know")? What is the best way to make it easy for PPP holders to find their way through the different layers?

### **Distribution and selling practises**

Q56. What level of protection is needed in the distribution process? What is needed in order to prevent conflicts of interest from adversely affecting the interests of PPP holders?

Q57. Are there existing examples of EU regulation that cover this area already (for example the MiFID and IMD2 conflict of interest and rules on selling practises)? What would be the reasons to deviate from the level envisaged in IMD2 or MiFID? Are there requirements elsewhere that would provide appropriate protection for PPP holders?

Q58. How should selling practices (including advice) for personal pension products be regulated?

Q59. Is the concept of MiFID 'suitability'<sup>29</sup> also fit for personal pensions? If not, how can it be made fit for personal pensions?

Q60. What conflict of interest rules should apply (e.g. organisational/administrative requirements, together with disclosure and remuneration requirements)?

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<sup>29</sup> Assessing suitability means investment firms must obtain the necessary information - information on objectives, financial situation and knowledge and experience - in order to assess the suitability of any investment for that client.

Q61. What information requirements should apply with respect to the service rendered: what information needs to be given to the PPP holders in case of advice (e.g. firm status disclosure, assessment of demands and needs of the PPP holder)?

Q62. Are, and if yes, what requirements are needed with regard to complaints handling?

Q63: Are there existing examples of EU regulation that cover this area already? Would IMD1 – as well as the upcoming IMD2 – provide a good source of possible inspiration for distribution rules for personal pensions? What about MiFID I and II?

### **Professional requirements**

Q64. What professional requirements would be appropriate? Is there a need for high level principles or more detailed regulation?

Q65. What should be the scope of these requirements? Should they apply on a continuous basis with a requirement of updating?

Q66. Are there existing examples of EU regulation that cover this area already? For example the existing knowledge and ability requirements in Article 4, IMD1 and in the IMD2 proposal, defined as a result-oriented obligation where that knowledge and ability must be appropriate “to complete their tasks and perform their duties adequately, demonstrating appropriate professional experience relevant to the complexity of the products they are mediating”. Would this be a good source of inspiration for personal pensions? What about MiFID I and II?

Q67. What would be the reasons to deviate from the level envisaged in IMD2? Should factors such as taxation of pension’ products play a role in determining the level of knowledge required?

### **Product regulation**

Q68: What could be the role of product regulation in the context of PPPs?

Q69. Would you consider it useful if principles are established for the steps and considerations the industry should take into account before launching a new product or modifying existing products? If so, what would in your view be the main considerations that should be taken into account?

Q70: Would you consider it useful if certified products are introduced in the context of personal pensions? Should they be introduced at a European or a national level? What initiatives at European level do you consider to be useful?

Q71: What role could be played by product authorization and or product banning, in order to protect holders against certain PPPs that are more likely to lead to poor pension outcomes?

## Examples of (pure) Personal Pension Plans/Products in EU Member States

(source: EIOPA Pensions Database)

COUNTRY	CODE PENSION PLAN/PRODUCT (level 1)	NAME OF THE PENSION PLAN/PRODUCT	CODE PENSION PLAN/PRODUCT (level 2)	OCCUPATION ALvs PERSONAL-	DC vs DB	APPLICABLE EU LAW
BE	BE 3	Branche 21 life insurance operated by an insurance company	BE 3.1	P	DC with guarantees	LAD
		Branche 23 life insurance operated by an insurance company	BE 3.2	P	DC	LAD
	BE 4	<i>Pensioenspaarfonds</i> Fonds d'épargne-pension	BE 4	P	DC	NEL
BG	BG 2	<i>Пенсионно-осигурително дружество</i> Voluntary pension funds	BG 2	P	DC	NEL
	BG 3	<i>Пенсионно-осигурително дружество</i> Universal pension funds	BG 3	P	DC with guarantees	SSR
	BG 4	<i>Пенсионно-осигурително дружество</i> Professional pension funds	BG 4	P	DC with guarantees	SSR
CZ	CZ 1	<i>Transformovaný penzijní fond</i> Transformed pension fund	CZ 1	P	DC with guarantees	NEL
	CZ 3	<i>Doplňkové penzijní spoření</i> Supplementary pension savings	CZ 3	P	DC	NEL
	CZ 4	<i>Důchodové spoření</i> Retirement savings	CZ 4	P	DC	NEL
	CZ 5	<i>Soukromé životní pojištění na důchod</i> Private life assurance on pension	CZ 5.1	P	DC	LAD
			CZ 5.2	P	DB	LAD

COUNTRY	CODE PENSION PLAN/PRODUCT (level 1)	NAME OF THE PENSION PLAN/PRODUCT	CODE PENSION PLAN/PRODUCT (level 2)	OCCUPATION ALvs PERSONAL-	DC vs DB	APPLICABLE EU LAW
DE	DE 6	<i>Lebensversicherungsunternehmen</i> <b>Riester-Rente - private Rentenversicherung</b> Riester pension - private pension insurance	DE 6.1	P	DB contribution based	LAD
		Kreditinstitut <b>Riester-Rente - Banksparplan</b> Riester pension - bank savings plan	DE 6.2	P	DB contribution based	CRD
		<i>Kapitalanlagegesellschaft, Investmentgesellschaft</i> <b>Riester-Rente-Investmentfondssparplan</b> Riester-pension - investment fund savings plans	DE 6.3	P	DB contribution based	UCITS
		<i>Bausparkassen</i> <b>Riester-Rente Bausparvertrag mitlebenslanger Leistung</b> Riester-pension - home loan and savings contract	DE 6.4	P	DB contribution based	CRD
		<i>Genossenschaften</i> <b>Riester-Rente Sparplan mit weiteren Geschäftsanteilen einer Genossenschaft</b> Riester-pension - Saving plan with additional shares in a cooperative	DE 6.5	P	DB contribution based	NEL
	DE 7	<i>Lebensversicherungsunternehmen</i> <b>Basisrente - private Rentenversicherung</b>	DE 7.1	P	DB contribution based	LAD

COUNTRY	CODE PENSION PLAN/PRODUCT (level 1)	NAME OF THE PENSION PLAN/PRODUCT	CODE PENSION PLAN/PRODUCT (level 2)	OCCUPATION ALvs PERSONAL-	DC vs DB	APPLICABLE EU LAW
		Basispension - private pension insurance				
		<i>Kapitalanlagegesellschaft, Investmentgesellschaft</i> <i>Basisrente-Fondssparplan</i> <i>Basis pension - Investment fund savings plan</i>	DE 7.2	P	DB contribution based	UCITS
	DE 8	<i>Lebensversicherungsunternehmen</i> <i>Kapitallebens- und Rentenversicherungsprodukte</i>	DE 8.1	P	DB contribution based	LAD
		Individual life insurance products	DE 8.2	P	DC	LAD
EE	EE 1	<i>Vabatahtlikpensionifond</i> Voluntary pension fund	EE 1	P	DC	NEL
	EE 2	<i>Kohustuslikpensionifond</i> Mandatory pension fund	EE 2	P	DC	SSR
	EE 3	<i>Elukindlustusselts</i>	EE 3.1	P	DC with guarantees	LAD
			EE 3.2	P	DC	LAD
ES	ES 2	<i>Fondo de Pensiones personal</i> Personal pension fund	ES 2	P	DC	NEL
	ES 5	<i>PPA</i> Prevision Plan Assured	ES 5	P	DB	LAD
FR	FR 9	PERP	FR 9	P	DC with guarantees	LAD
	FR 10	Schemes under Article L.441-1 of Insurance Code, L.932-24 of Social Security Code, L. 222-2 of Mutual Code	FR 10	P	DB contribution based	LAD

COUNTRY	CODE PENSION PLAN/PRODUCT (level 1)	NAME OF THE PENSION PLAN/PRODUCT	CODE PENSION PLAN/PRODUCT (level 2)	OCCUPATION ALvs PERSONAL-	DC vs DB	APPLICABLE EU LAW
HU	HU 1	<i>Magánnyugdíjpénztár</i> Private pension fund	HU 1	P	DC with guarantees	SSR
	HU 2	<i>Önkéntesnyugdíjpénztár</i> Voluntary pension fund	HU 2	P	DC	NEL
IE	IE 2	Personal pension	IE 2	P	DC	LAD
	IE 3	Personal Retirement Savings Accounts	IE 3	P	DC	LAD
IS	IS 3	<i>Séreignasparnaður</i> Personal pension scheme	IS 3	P	DB	NEL
IT	IT 3	<i>Piani pensionistici individuali - Pip</i> Personal retirement plans implemented through insurance policies	IT 3.1	P	DC	LAD
			IT 3.2	P	DC with guarantee	LAD
LI	LI 3	<i>Versicherungsunternehmen, direkteLebensversicherung</i> Insurance company	LI 3.1	P	DC with guarantee	LAD
			LI 3.2	P	DC	LAD
LT	LT 4	<i>Valdymo įmonė; pensijų kaupimo sutartis</i> Pension accumulation schemes	LT 4	P	DC	NEL
	LT 5	<i>Gyvybės draudimo įmonė; pensijų kaupimo sutartis</i> Pension accumulation schemes	LT 5	P	DC	NEL
	LT 6	<i>Valdymo įmonė ; papildomosavanoriškopensijųkaupimosutartis</i> Supplementary voluntary pension schemes	LT 6	P	DC	UCITS
	LT 7	<i>Gyvybės draudimo įmonė; gyvybės draudimo sutartis, kai investavimo rizika tenka draudėjui</i>	LT 7	P	DC	LAD

COUNTRY	CODE PENSION PLAN/PRODUCT (level 1)	NAME OF THE PENSION PLAN/PRODUCT	CODE PENSION PLAN/PRODUCT (level 2)	OCCUPATION ALvs PERSONAL-	DC vs DB	APPLICABLE EU LAW
		Life assurance contracts when all the investment risk is borne by the policyholder				
	LT 8	<i>Gyvybės draudimo įmonė; gyvybės draudimo sutartis</i> Life assurance contracts providing cover against biometric risks and/or guarantee either an investment performance or a given level of benefits	LT 8	P	DB contribution based	LAD
LU	LU 5	<i>Contrat de prévoyance-vieillesse</i>	LU 5.1	P	DC	LAD
			LU 5.2	P	DC with guarantees	LAD
LV	LV 2	<i>State funded pension scheme</i> State social security scheme	LV 2	P	DC	SSR
MT	MT 2	Personal Retirement Scheme	MT 2.1	P	DC	NEL
			MT 2.2	P	DB	NEL
NL	NL 3	<i>Kapitaalverzekering</i> Insurance company or insurer	NL 3.1	P	DC	LAD
			NL 3.2	P	DC with guarantees	LAD
	NL 4	<i>Banksparen</i>	NL 4	P	DC	NEL
NO	NO 3	Individual pension schemes	NO 3.1	P	DC	LAD

COUNTRY	CODE PENSION PLAN/PRODUCT (level 1)	NAME OF THE PENSION PLAN/PRODUCT	CODE PENSION PLAN/PRODUCT (level 2)	OCCUPATION ALvs PERSONAL-	DC vs DB	APPLICABLE EU LAW
			NO 3.2	P	DC	UCITS
PL	PL 5	<i>Otwarty fundusz emerytalny</i> Open pension fund	PL 5	P	DC	NEL
	PL 6	<i>Indywidualne konto emerytalne (IKE)</i> Individual retirement account	PL 6	P	DC	UCITS, LAD, CRD
	PL 7	<i>Indywidualne konto zabezpieczenia emerytalnego (IKZE)</i> Individual retirement savings account	PL 7	P	DC	UCITS, LAD, CRD
PT	PT 3	<i>Adesões individuais a fundos de pensões abertos</i> Individual membership of open pension funds	PT 3	P	DC	NEL
	PT 5	<i>Planos poupança-reforma</i> Retirement saving schemes <i>Insurance contracts</i>	PT 5.1	P	DC	LAD
		<i>Planos poupança-reforma</i> Retirement saving schemes Pension funds	PT 5.2	P	DC	NEL
		<i>Planos poupança-reforma</i> Retirement saving schemes Investment funds	PT 5.3	P	DC	NEL

COUNTRY	CODE PENSION PLAN/PRODUCT (level 1)	NAME OF THE PENSION PLAN/PRODUCT	CODE PENSION PLAN/PRODUCT (level 2)	OCCUPATION ALvs PERSONAL-	DC vs DB	APPLICABLE EU LAW
RO	RO 1	<i>Societate de administrare a unui fond de pensii administrat privat</i>	RO 1	P	DC with guarantees	NEL
SK	SK 1	<i>Dôchodková správcovská spoločnosť</i> Retirement pension savings	SK 1	P	DC with guarantees	SSR
UK	UK 2	Group Personal Pension [GPP]	UK 2	P	DC	LAD
	UK 3	Personal pension scheme	UK 3	P	DC	LAD

LAD – Life Assurance Directive

NEL – No European Legislation

SSR – Social Security Regulation

CRD – Capital Requirements Directive

UCITS – Undertakings for Collective Investments in Transferable Securities Directive

**Annex 2:**
**Examples of products with dual occupational and personal features in EU Member States**

(source: EIOPA Pensions Database)

COUNTRY	CODE PENSION PLAN/PRODUCT (level 1)	NAME OF THE PENSION PLAN/PRODUCT	OCCUPATIONAL vs PERSONAL (level 1)	CODE PENSION PLAN/PRODUCT (level 2)	OCCUPATIONAL vs PERSONAL (level 2)	DC vs DB	APPLICABLE EU LAW
AT	AT 3	<i>Lebensindividual und Gruppenrentenversicherung</i>	O&P	AT 3	O & P	DC with guarantees	LAD
BE	BE 2	Pension plan operated by an insurance company operating according to Royal Decree '69 through branche 21 group or life insurance	O&P	BE 2.8	O&P	DC with guarantees	LAD
DK	DK 2	<i>Livsforsikringsselskab</i> Occupational schemes	O & P	DK 2.1	O	DC	LAD
		<i>Livsforsikringsselskab</i> Personal schemes		DK 2.2	P	DC	LAD
HU	HU 3	<i>Nyugdíjbiztosítás</i> Pension insurance products of life assurance companies	O&P	HU 3	O & P	DB	LAD
IT	IT 2	<i>Fondi pensione aperti</i> Open pension funds	O & P	IT 2.1	P	DC	IORP
				IT 2.2	O	DC	IORP
LV	LV 1	<i>Privātais pensijufonds</i>		LV 1.1	O & P	DC	IORP

COUNTRY	CODE PENSION PLAN/PRODUCT (level 1)	NAME OF THE PENSION PLAN/PRODUCT	OCCUPATIONAL vs PERSONAL (level 1)	CODE PENSION PLAN/PRODUCT (level 2)	OCCUPATIONAL vs PERSONAL (level 2)	DC vs DB	APPLICABLE EU LAW
			O&P	LV 1.2	O & P	DB	IORP
RO	RO 2	<i>Administrator de fonduri de pensii facultative</i>	O & P	RO 2	O & P	DC	IORP
SE	SE 1	Livförsäkringsaktiebolag Proprietary life insurance company	O & P	SE 1.1	O	DB	LAD,IORP ART. 4
				SE 1.2	O	DC with guarantees	LAD,IORP ART. 4
				SE 1.3	P	DC with guarantees	LAD,IORP ART. 4
				SE 1.4	O	DC	LAD,IORP ART. 4
				SE 1.5	P	DC	LAD,IORP ART. 4
	SE 2	Ömsesidiga Livförsäkringsbolag Mutual life insurance company	O & P	SE 2.1	O	DB	LAD,IORP ART. 4
				SE 2.2	O	DC with guarantees	LAD,IORP ART. 4
				SE 2.3	P	DC with guarantees	LAD,IORP ART. 4
				SE 2.4	O	DC	LAD,IORP ART. 4
				SE 2.5	P	DC	LAD,IORP ART. 4

COUNTRY	CODE PENSION PLAN/PRODUCT (level 1)	NAME OF THE PENSION PLAN/PRODUCT	OCCUPATIONAL vs PERSONAL (level 1)	CODE PENSION PLAN/PRODUCT (level 2)	OCCUPATIONAL vs PERSONAL (level 2)	DC vs DB	APPLICABLE EU LAW
SI	SI1	<i>Pokojninska družba Pokojninski načrt po ZPIZ-1</i>	O&P	SI 1	O & P	DC with guarantees	IORP
	SI 2	<i>Zavarovalnica Pokojninski načrt po ZPIZ-1</i>	O&P	SI 2	O & P	DC with guarantees	IORP ART. 4
	SI 3	<i>Vzajemni pokojninski sklad -Pokojninski načrt po ZPIZ-1</i>	O&P	SI 3	O & P	DC with guarantees	IORP
	SI 4	<i>Sklad obrtnikov in podjetnikov (SOP)- Poklicno pokojninsko zavarovanje</i>	O&P	SI 4	O & P	DB contribution based	NEL
SK	SK 2	Doplňková dôchodková spoločnosť Supplementary retirement pension saving	O&P	SK 2	O & P	DC	IORP

## Material differences between OECD and EIOPA definitions:

(source: EIOPA Pensions Database)

COUNTRY	CODE PENSION PLAN/PRODUCT (level 1)	NAME OF THE PENSION PLAN/PRODUCT	CODE PENSION PLAN/PRODUCT (level 2)	APPLICABLE EU LAW (OECD DEFINITION)	APPLICABLE EU LAW (EIOPA DEFINITION)
AT	AT 2	<i>Betriebliche Kollektivversicherung</i>	AT 2.2	O	O&P
AT	AT 3	<i>Lebensindividual- und Gruppenrentenversicherung</i>	AT 3	O&P	O
LT	LT 6	<i>Valdymo įmonė ; papildomo savanoriško pensijų kaupimo sutartis</i> Supplementary voluntary pension schemes	LT 6	P	O&P
LT	LT 7	<i>Gyvybės draudimo įmonė; gyvybės draudimo sutartis, kai investavimo rizika tenka draudėjui</i> Life assurance contracts when all the investment risk is borne by the policyholder	LT 7	P	O&P
LT	LT 8	<i>Gyvybės draudimo įmonė; gyvybės draudimo sutartis</i> Life assurance contracts providing cover against biometric risks and/or guarantee either an investment performance or a given level of benefits	LT 8	P	O&P
UK	UK 2	Group Personal Pension [GPP]	UK 2	P	O & P

The table shows that in certain cases a pension plan classified as occupational (O), personal (P) or dual (O&P) under OECD definition, may classify as occupational or dual under the EIOPA definition."

## Detailed characteristics of 1<sup>st</sup> pillar bis providers (management companies) and products (pension funds)

- **A pension fund (product)** is a pool of members' contributions, financial instruments acquired for contributions and yields (e.g. dividends, interest rates), jointly owned by the members of the fund. The pension fund is based on a DC promise, although in many CEE countries it is required to provide a minimum return guarantee. The scope of this guarantee and the role of the MS therein may vary considerably.<sup>30</sup> In other MSs however these are pure DC pension plans where investment risk is solely borne by members<sup>31</sup>. Assets of the fund are ring-fenced from the assets of the management company and other pension funds. Membership in a pension fund is based on the contractual relationship between an individual and a management company in most of the countries<sup>32</sup>.
- **High degree of product standardisation.** The national law provides for a great level of detail regarding the pension funds' design, including rules on eligible assets, investment limits, cost caps, pre-contractual and on-going information to members and the mandatory elements of the contract between member and provider.
- **In most of the CEE MSs the management company (provider) is a private financial institution established for the sole purpose of managing the 1<sup>st</sup> pillar bis pension funds. In other countries the management is done by entities that also have other kind of assets under management<sup>33</sup>.** In countries where the management company is established for the sole purpose of managing the 1<sup>st</sup> pillar bis pensions, the management company is not allowed to conduct any other business. This institution has legal personality and is subject to national regulation, licensed and supervised by the national supervisory authority. In most cases<sup>34</sup> the management company does not pay any benefits that include biometric risks. Such benefits are paid by an insurance company or a state owned special purpose entity to which the accumulated savings of members are transferred upon retirement. The employers do not play any role in establishing or sponsoring the management companies. The majority of management companies in CEE MSs are subsidiaries of large global or pan-European financial groups.
- **The national regulation** of 1<sup>st</sup> pillar bis systems is mostly inspired by UCITS and contains both prudential elements applicable to the management company (e.g. minimum capital requirements, governance framework, disclosure to supervisory

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<sup>31</sup> In LV there are no minimum guarantees

<sup>32</sup> In LV the membership is based on member's application to Social Security Agency

<sup>33</sup> In LV the asset managers of 1st pillar bis are allowed also to manage UCITS, alternatives and individual portfolios including occupational pensions. In BG the pension insurance companies governing the 1st pillar bis pension funds can also manage voluntary pension funds and voluntary pension funds with occupational schemes.

<sup>34</sup> In BG acc. to the present legislation annuities will be provided by the management company.

authority) and to the consumer aspects applicable to the pension fund (e.g. pre-contractual information, on-going information, selling practices, caps on fees charged by management companies). One CEE MS also uses elements of the IORP directive.

- **Individual accounts and transfer of balances between funds.** Each member has his/her own individual account in which contributions are recorded and that shows the amount accrued since he/she joined the pension fund. A member can transfer its account balance from one pension fund to another, without the ability to transfer the money outside of the 1st pillar bis system. The balance of the individual pension account is inheritable.
- **Central collection of contributions.** The contribution to the 1st pillar bis systems is collected either by the social security network or by the state tax office.

Even though the philosophy and main elements of 1<sup>st</sup> pillar bis systems in CEE MSs are very similar, some essential differences do exist. Examples of these differences are:

- **The pension fund may or may not have legal personality.** In some cases the pension fund may have legal personality (eg. PL, BG). In other MS the pension fund doesn't have legal personality (e.g. SK, RO<sup>35</sup>).
- In most of the MS the **management companies are allowed to manage only 1<sup>st</sup> pillar bis** assets while in some countries this restriction is not in force.
- In some **MSs management companies are restricted by law to manage only one pension fund** (eg. RO), in others management companies are allowed to manage multiple pension funds with different risk/return profiles (e.g. SK).
- The **membership to a pension fund in most of the CEE MSs is based on a contract between members and the management company.** However, there are also exceptions where, instead of direct contractual relations between the management company and the member, the Social Security Service is acting as an intermediary. Here, the contracts are concluded between providers and the Social Security Service and membership applications are filed with the Social Security Service.

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<sup>35</sup> A pension fund in RO is subject to a "civil association agreement" which states that the founding members of the pension fund establish the pension fund and the pension fund management company. Any member of the pension fund has the same rights and liabilities as the founding members. Unlike a trustee agreement, after the civil association has been concluded, the members can't change the pension fund management company without its acceptance.

## Technical analysis of the Life Assurance Directive and its impact on cross-border activities<sup>36</sup>

The following section discusses examples of prudential obstacles to the cross-border provision of life insurance PPPs.

### **Solvency 1**

In this subpart, the issues presented apply to the case that accumulated capital is being transferred (DB and DC product with guarantees) between two different insurance providers situated in two different MSs.

#### ***The maximum rate applicable: its impact on the commitment:***

With respect to contracts that contain an interest rate guarantee, the maximum rate that may be used could differ from one MS to another. In a single market and in the same currency area, this might qualify as a cross-border obstacle, especially if people have the opportunity to transfer their provisions. Indeed, people may subscribe in the most attractive MS (with the highest rate of interest) and ask to transfer their contracts in the MS where they want to retire. This, it might be argued, might lead to interest rate arbitrage.

Example: Let's consider a MS A with a higher maximum rate applicable than in a MS B.

A consumer subscribes in MS A with the maximum rate applicable guaranteed. A few years later, this person decides to move to MS B. If there is no change in this contract that means the person may have a contract which does not respect the local law. How could we avoid this situation?

Possible way forward:

- Define one maximum rate applicable for all the contract in the same currency area.
- Decide that transferability is an option that may have a cost for the consumer and may imply some changes in the contract if the option is used.

#### ***Impacts on the provisions / benefits:***

In the body of the directive (LAD), the technical specifications may create some limits for the transferability of provisions. As provided in article 20 of the Life Assurance Directive, the amount of the technical provisions shall be calculated by a sufficiently prudent prospective actuarial valuation, taking account of all future liabilities as determined by the policy conditions for each existing contract. In the directive it is stated that the technical provisions shall be calculated separately for each contract, which means that we can identify for each contract the amount of provisions. Nevertheless it's not enough to ensure the transferability of the contract and its provisions.

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<sup>36</sup> The aim of this annex is to outline some of the actuarial issues that may arise in relation to creating a single market for PPPs. The analysis is not meant to be comprehensive.

**Issues related to the rate of interest on the provisions:**

The rate of interest that has to be chosen shall be determined in accordance with the rules of the competent authority in the home MS (the MS in which the head office of the assurance undertaking covering the commitment is situated). To compute the provisions, the rate used is (most of the time) the rate of the commitment.

Once again, we take the example of two MSs, A and B, where MS A applies a higher maximum rate than MS B. For a contract subscribed in MS A with the maximum rate tolerated there, the amount of provision will depend on this rate. If the consumer asks for a transfer of his contract and provisions to MS B, the amount of technical provisions shall be calculated at least with the maximum rate applicable in MS B. Otherwise, the insurance undertaking which receives the commitment will not be compliant with the law of its MS. Also, the amount of provisions needed, will be higher under the legislation of MS B. Who shall pay for this difference?

Remark: In many MSs, the maximum rate applicable is calculated from the rate on bonds issued by the MS in whose currency the contract is denominated.<sup>37</sup> In the case of MSs using the same currency, insurance undertakings may find the same opportunities on the financial markets. Also, they shall be able to use the same rate.

**Issues linked to the use of actuarial tables<sup>38</sup>**

There may also be issues linked to the actuarial tables, which are most of the time based on the MS' mortality statistics and, possibly, on their expected trends. If you transfer a commitment from one MS to another, the new company will most probably continue to use its own actuarial table. That means that the actuarial table used to calculate the technical provisions will not be related to the underlying risk of that specific contract. For one contract, this will not really be significant. Nevertheless, if we consider the transfer of a large portfolio or various customers who ask for transfer to the same provider, this may create issues.

In case of annuities, a change in the mortality table may have a significant impact on the amount of technical provisions calculated.

**Issues linked to other assumptions used in the calculation of the provisions:**

Especially in DB plans, other assumptions may be relevant to define benefits provided by the PPP (salary expected trend, social security law,..) and therefore have an impact on the calculation of the technical provisions. In case of a capital transfer there might be a lack of consistency in rules and assumptions to be used in different MSs. Therefore, this aspect also needs to be considered in case of a capital transfer because they might have an impact on the final benefit deriving from the PPP.

**How could we transfer provisions between two States with different currencies?**

Matching rules may create issues with regard to the transfer of technical provisions from one MS to another, when both MSs do not have the same currency. These rules are very important to protect the consumers from currency risks. Nevertheless in order to create a single market, these kinds of transfer need to be taken into account.

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<sup>37</sup> Please note that in some MSs the maximum rate is prescribed by regulation.

<sup>38</sup> The discussion in this paragraph applies only to cases where the MS prescribes the mortality tables to be used by insurance companies

## **Solvency II**

Under Solvency II, the discount rate shall be defined by EIOPA for each currency. So for the same contract technical provisions between two MSs, using the same currency, shall not differ. Nevertheless it seems that the issues linked to the maximum guaranteed interest rate used for the PPP contract and the actuarial table will still remain.